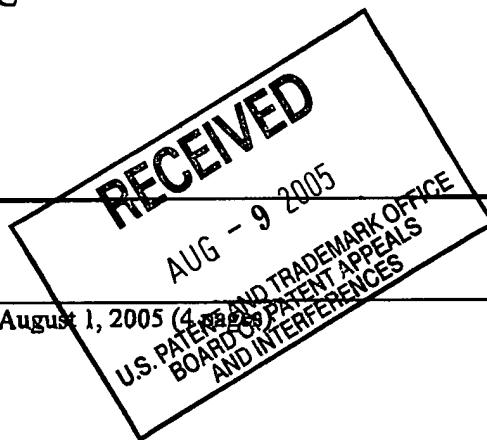


FAX TRANSMISSION**DATE:** August 9, 2005**PTO IDENTIFIER:** Application Number 09/990,911-Conf. #4207
Patent Number**Inventor:** J. A. Bly et al.**MESSAGE TO:** US Patent and Trademark Office**FAX NUMBER:** (571) 273-0053**FROM:** RADER, FISHMAN & GRAUER PLLC

Charles A. Bieneman

PHONE: (248) 594-0648**Attorney Dkt. #:** 65678-0042**PAGES (Including Cover Sheet):** 28**CONTENTS:** Response to Communication re: Appeal Dated August 1, 2005 (4 pages)
Amended Appeal Brief (22 pages)
Certificate of Transmission (1 page)

If your receipt of this transmission is in error, please notify this firm immediately by collect call to sender at (248) 594-0648 and send the original transmission to us by return mail at the address below.

This transmission is intended for the sole use of the individual and entity to whom it is addressed, and may contain information that is privileged, confidential and exempt from disclosure under applicable law. You are hereby notified that any dissemination, distribution or duplication of this transmission by someone other than the intended addressee or its designated agent is strictly prohibited.

RADER, FISHMAN & GRAUER PLLC
39533 Woodward Avenue, Suite 140, Bloomfield Hills, Michigan 48304
Telephone: (248) 594-0600 Facsimile: (248) 594-0610

PTO/SB/97 (09-04)

Approved for use through 07/31/2008, OMB 0851-0031

U. S. Patent and Trademark Office; U. S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

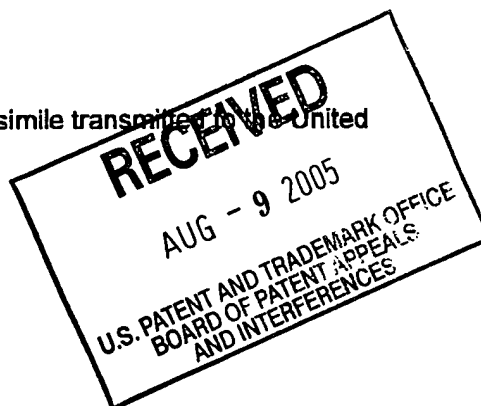
Application No. (if known): 09/990,911

Attorney Docket No.: 65678-0042

Certificate of Transmission under 37 CFR 1.8

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office.

on August 9, 2005
Date



A handwritten signature in cursive script that reads "Heather Edwards".

Signature

Heather Edwards

Typed or printed name of person signing Certificate

Registration Number, if applicable

(248) 583-3331

Telephone Number

Note: Each paper must have its own certificate of transmission, or this certificate must identify each submitted paper.

Response to Communication re: Appeal Dated August 1, 2005 (4 pages)
Amended Appeal Brief (22 pages)

I hereby certify that this correspondence is being facsimile transmitted to the Patent and Trademark Office, facsimile no. 571-273-0053, on the date shown below.

Dated: August 9, 2005

Signature: Heather Edwards

(Heather Edwards)

Docket No.: 65678-0042
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
J. A. Bly et al.

Application No.: 09/990,911

Confirmation No.: 4207

Filed: November 14, 2001

Art Unit: 3621

For: SYSTEM AND METHOD FOR DISPOSING
OF ASSETS

Examiner: C. L. Hewitt

RESPONSE TO COMMUNICATION RE: APPEAL DATED AUGUST 1, 2005

MS Appeal Brief
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RECEIVED

AUG - 9 2005

U.S. PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

Dear Sir:

This paper responds to the Office's "Communication Re: Appeal" dated August 1, 2005, Paper No. 20050719 ("Office Communication"). In the Office Communication, made on Form PTOL-461, the Examiner alleged that the Appeal Brief timely filed on May 5, 2005 was not acceptable because it allegedly "does not comply with [37 CFR. §] 41.37(c). Specifically, the Brief does not contain an Evidence Appendix." The Office Communication further stated that "[t]he appeal in this application will be dismissed unless corrective action is taken to timely submit the brief and requisite fee. See 37 CFR 41.37(a)(1)." An amended Appeal Brief, including an Evidence Appendix (even though there is no evidence to be associated therewith), is attached hereto and filed herewith.

Further, Applicants respectfully submit that, even if the Appeal Brief was determined not to be fully compliant with 37 CFR § 41.37(c), they should have been "notified of the reasons for non-compliance and given a time period within which to file an amended brief," as provided for in

Application No.: 09/990,911

Docket No.: 65678-0042

37 CFR. § 41.37(d), particularly since the amended Appeal Brief has no substantive modifications from the brief that was timely filed. Accordingly, the original Appeal Brief should be entered as of its filing date.

The refusal to accept the Appeal Brief (and the use of Form PTOL-461) was clearly inappropriate in this case. Instead, notices of Non-Compliant Appeal Briefs are to be set forth using Form PTOL-462. Indeed, as explained in the MPEP:

37 CFR 1.192(d)^[1] provides that if a brief is filed which does not comply with all the requirements of paragraph (c), the appellant will be notified of the reasons for noncompliance. Appellant will be given the longest of any of the following time periods to correct the defect(s):

(A) 1 month or 30 days from the mailing of the notification of non-compliance, whichever is longer;

(B) within the time period for reply to the action from which appeal has been taken; or

(C) within 2 months from the date of the notice of appeal under 37 CFR 1.191.

Extensions of time may be granted under 37 CFR 1.136(a) or 1.136(b). The examiner may use the form paragraphs set forth below or form PTOL-462, "Notification of Non-Compliance with 37 CFR 1.192(c)," to notify appellant that the appeal brief is defective. The appeal will be dismissed if the appellant does not timely file an amended brief, or files an amended brief which does not overcome all the reasons for noncompliance of which the appellant was notified.

Under 37 CFR 1.192(d), the appellant may file an amended brief to correct any deficiencies in the original brief. Moreover, if appellant disagrees with the examiner's holding of noncompliance, a petition under 37 CFR 1.181 may be filed.

MPEP, § 1206 (8th Ed.).

Here, the Office Communication gives Applicants no opportunity to correct the Appeal Brief's alleged non-compliance with 37 CFR § 41.37(c). Instead, Form PTOL-461, used for the

¹ 37 CFR § 1.192 is the predecessor to 37 CFR § 41.37.

Application No.: 09/990,911

Docket No.: 65678-0042

Office Communication, addresses situations in which an Appeal Brief was not submitted at all. Indeed, the Examiner checked box number 2 of Form PTOL-461, indicating that “[t]he Appeal Brief . . . is not acceptable for the reasons indicated below,” but then did not indicate any of the listed reasons, all of which are directed to situations in which a brief was not timely filed and/or accompanied by the requisite fee. Rather, the Examiner made a handwritten notation “see continuation sheet,” and thereupon provided the allegations of insufficiency quoted above. Thus, contrary to 37 CFR § 41.37(d) and MPEP § 1206, the Examiner refused to accept the duly filed Appeal Brief, and failed to provide the notification and opportunity to correct alleged deficiencies as required by 37 CFR § 41.37(d).

In this case, the Appeal Brief was timely filed, and the appropriate fee was timely paid; the Examiner has made no allegation to the contrary. Moreover, there can be no dispute that the Appeal Brief as originally filed was at least substantively in compliance with 37 CFR § 41.37(c). In fact, Applicants do not believe that the Appeal Brief was noncompliant at all for failing to provide the Evidence Appendix described in 37 CFR § 41.37(c)(1)(ix), as alleged by the Examiner, inasmuch as no evidence was submitted pursuant to §§ 1.130, 1.131, or 1.132, nor was any other evidence entered by the Examiner and relied upon in the appeal. In other words, the Appeal Brief did not include an Evidence Appendix because, as can be seen in the Amended Appeal Brief, Applicants have no information to include in such an appendix.

Application No.: 09/990,911

Docket No.: 65678-0042

In view of the foregoing remarks, Applicants believe that they are entitled to treat the Office Communication as a notification that the Appeal Brief is not compliant with 37 CFR § 41.37, in accord with MPEP § 1206 and 37 CFR § 41.37(d). Further, Applicants are filing this response, and the afore-mentioned Amended Appeal Brief, within one month of the date of the Office Communication. Accordingly, Applicants believe that the Appeal Brief should be entered as of May 5, 2005, and that no fee is due with this response or with the filing of the Amended Appeal Brief. Further, Applicants respectfully request that the Amended Appeal Brief be promptly considered by the Examiner.

Dated: August 9, 2005

Respectfully submitted,

By 

Michael B. Stewart

Registration No.: 36,018

Charles A. Bieneman

Registration No.: 51,472

RADER, FISHMAN & GRAUER PLLC

39533 Woodward Avenue

Suite 140

Bloomfield Hills, Michigan 48304

(248) 594-0633

Attorneys for Applicant